

***7 Official Opinions of the Compliance Board 89 (2011)***

**Quasi-Judicial Function – Animal Control Commission  
proceeding concerning violations of Animal Control  
Ordinance**

**Litigation – Board defers consideration of complaint raising  
matters at issue in parallel litigation**

February 3, 2011

*Timothy W. Saffell*  
*Prince Georges Feral Friends, SPCA, Inc.*

On behalf of the Prince Georges Feral Friends, SPCA, Inc. (“Feral Friends”), Timothy Saffell filed a complaint against the Prince George’s County Commission for Animal Control (“Commission”) alleging that the Commission failed to provide notice of its meetings or to allow him to record a particular meeting, all in violation of the Open Meetings Act. For the reasons stated below, we find that the session which Mr. Saffell wished to record was not subject to the Act. We defer consideration of the notice allegations pending resolution of a parallel court proceeding that involves those same allegations.

**I**

**Complaint and Response**

Feral Friends alleges that the Commission has failed to provide reasonable advance notice of its meetings. The complaint also charges that the Commission failed to comply with the Act when it refused to allow Mr. Saffell to make an audio and video recording of a Commission meeting on November 10, 2010.

An Assistant County Attorney filed a response on behalf of the Commission. The response did not address the merits of the allegations concerning violations of the notice provisions. Rather it noted that the Feral Friends has previously filed suit in Prince Georges County Circuit Court against the County and the Commission making similar charges. The Commission asked that the Compliance Board decline to review the allegations of notice violations in light of the pending circuit court proceeding. The amended complaint in that action, a copy of which was attached to the response, alleges, among other things, that the Commission has failed to

comply with the notice provisions of the Open Meetings Act and asks the court to issue an injunction concerning compliance with the Act.

With respect to the November 10, 2010, proceeding, the response provided a copy of the agenda for that meeting and stated that the Commission was acting in a quasi-judicial role on that date and that, as a result, the provisions of the Open Meetings Act concerning recording of a meeting by a member of the public did not apply. The response further stated that the Commission itself records all of its proceedings and that Mr. Saffell may request a copy or a transcription of the Commission's recording of the November 10, 2010.

## II

### Analysis

There appears to be no dispute that the Commission is a public body created by a County ordinance. *See* Prince George's County Code, §3-107. Under that ordinance, the Commission performs a variety of functions that may be characterized as advisory, quasi-legislative, and quasi-judicial. *Id.*, §§3-109, 3-110. Thus, it must comply with the notice, openness, and documentation requirements of the Open Meetings Act when performing a function subject to that Act and in certain other circumstances.<sup>1</sup>

The Commission has neither admitted nor denied the allegations of notice violations, and has not provided any information concerning those allegations. It is possible that relevant facts concerning those allegations will be developed in the parallel circuit court proceeding involving similar allegations. Unlike the circuit court, where witnesses may be summoned, evidence introduced, and relevant facts determined, the Compliance Board cannot resolve disputes of fact. *See* 1 *OMCB Opinions* 56, 58 (1994). Any facts found by the circuit court might well be helpful in consideration of the complaint before the Compliance Board. Accordingly, we will defer consideration of the alleged notice violations pending completion of the circuit court case. We will rely on the complainant to advise us when that case is resolved and whether it wishes to proceed with the complaint before the Compliance Board. The parties may then provide us with any relevant information developed in the circuit court case. Deferral of consideration of this part of the complaint should have no effect on the circuit court proceeding as our opinion would not influence the

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<sup>1</sup> Although the Act does not apply to a public body when performing an administrative function, it imposes certain documentation requirements if a public body recesses an open session to carry out an administrative function. §10-503(c).

court's decision – the Act prohibits the introduction of a Compliance Board opinion in court. §10-502.5(j).<sup>2</sup>

The Commission did respond to the allegation regarding Mr. Saffell's desire to record the Commission's November 10, 2010 proceedings. From the agenda and other information provided by the Commission, it appears that the Commission heard individual cases concerning alleged violations of the County's animal control ordinance. Its determinations of such cases are subject to judicial review pursuant to Maryland Rule 7-201 *et seq.* Accordingly, the Commission was acting in a quasi-judicial capacity. §10-502(i). The Act does not apply to a public body when it is acting in such a capacity. §10-503(a)(1)(iii). Thus, we find that the Commission did not violate the Act when it barred Mr. Saffell from making his own recording of one of those hearings.

### III

#### Conclusion

For the reasons explained above, we defer consideration of the notice allegations pending resolution of the circuit court proceeding. We find that the Commission did not violate the Act in declining to permit the complainant to make his own recording of the November 10, 2010, session because that session was not subject to the Act.

OPEN MEETINGS COMPLIANCE BOARD

*Elizabeth L. Nilson, Esquire*  
*Courtney J. McKeldin*  
*Julio A. Morales, Esquire*

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<sup>2</sup> We do not agree with the suggestion in the Commission's response that the Compliance Board loses jurisdiction simply because a complaint concerning alleged violations of the Open Meetings Act is filed in a circuit court. The Open Meetings Act itself does not prohibit parallel complaints. However, it is not a practice that we recommend. Indeed, in tolling the judicial statute of limitations during the pendency of a Compliance Board proceeding, *see* §10-510(b)(4), the Act appears to encourage a complainant to resolve a complaint first with the Compliance Board.